

No. 15050

United States
Court of Appeals
for the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

vs.

JAMES P. SANDERSON,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Western District of Washington,
Northern Division.

FILED

JUN 19 1956

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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United States District Court, Western District of
Washington, Northern Division

No. 3930

JAMES P. SANDERSON,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

COMPLAINT

Comes Now the plaintiff and for cause of action against the defendant, complains and alleges:

I.

That jurisdiction of this action is conferred upon this Court by 28 United States Code, section 1346(a); 28 United States Code section 1402; and 8 United States Code 1329.

II.

That at all times herein mentioned and at present, plaintiff was and now is a resident of the City of Seattle, State of Washington, and within the jurisdiction of this Court.

III.

That on or about the 5th day of November, 1948, plaintiff deposited with the Seattle District Director of Immigration and Naturalization, one of defendant's officers, agents and employees, one United States Treasury bond of 1967-72, Serial Number 556845E, having a face value of One

Thousand Dollars (\$1,000.00) bearing interest at the rate of 2½ per cent per annum and having 49 coupons attached having a face value of \$12.50 each, payable June 15 and December 15; that said bond with attached coupons was deposited to guarantee the physical presence of one Eng Kam for deportation in the event said Eng Kam was to be properly deported by duly constituted authorities of defendant.

IV.

That in June, 1952, a petition for a Writ of Habeas Corpus on behalf of Eng Kam was heard before this Court in cause number 3045; that this court at that time held Eng Kam had not been given a fair hearing on his application for admission to the United States by the Immigration officers of defendant, and ordered that the Immigration authorities of the defendant at Seattle conduct a fair hearing on the proposed deportation of said Eng Kam in accordance with the rules of the Immigration Service and in accordance with the decisions of the Federal Courts; that this Court further ordered that Eng Kam be released from custody under the bond originally filed and hereinabove referred to.

V.

That on April 12, 1952, the Commissioner of Immigration and Naturalization at Washington, D. C., being a principal representative of the defendant, was advised that Eng Kam had been apprehended and was then in the custody of the officers of the defendant at Seattle pending the

outcome of habeas corpus proceedings filed in the District Court, at Seattle on the ground of an unfair hearing; that the receipt of said letter was acknowledged on May 6, 1952.

VI.

That during the time this Court had jurisdiction over the petition of Eng Kam above referred to, defendant acting by and through its agents, officers and employees in the Immigration and Naturalization Service did wilfully, wrongfully and unlawfully declare the bond plaintiff had on deposit with defendant forfeited and did forfeit said bond; that the exact date is unknown to plaintiff because plaintiff was not furnished with a copy of the final decision on appeal but has been advised by the representatives of the defendant that the said bond was ordered breached on May 26, 1952; that the sum of \$50.00, in lieu of four coupons that had matured, was paid to plaintiff in September, 1952; that defendant, acting by and through its agents, officers and employees, wrongfully and unlawfully failed and refused and still fails and refuses to return said bond with attached coupons or its cash equivalent; that defendant so refused and refuses to return plaintiff's bond with coupons attached despite repeated demands made by plaintiff on defendant.

VII.

That Eng Kam was declared legally admissible to the United States of America by an order of the Board of Immigration Appeals, acting for and

in behalf of defendant, the date of said order being the 21st day of April, 1953; that a previous action by plaintiff setting forth substantially the same facts as herein recited was dismissed without prejudice by this Court on the 3rd day of November, 1953.

Wherefore, plaintiff prays for an order and judgment of this court that defendant be ordered to return the United States Treasury Bond 1967-72, Serial Number 556845E, face value \$1,000.00 with all the coupons attached to date of judgment, less four coupons that have been paid for, to plaintiff, or in the alternative that plaintiff have judgment against defendant in the sum of \$1,000.00 with interest at the rate of 2½ per cent per annum from June 16, 1948, less the value of the said four coupons, together with plaintiff's costs and disbursements herein.

/s/ MYRON L. BORAWICK,

/s/ STEWART LOMBARD,

Attorneys for Plaintiffs.

Duly verified.

[Endorsed]: Filed April 25, 1955.

[Title of District Court and Cause.]

ANSWER

Comes now the defendant, United States of America, and for answer to plaintiff's complaint herein admits, alleges and denies as follows:

First Defense

Defendant admits the allegations contained in paragraphs I, II, IV, and VI of plaintiff's complaint;

As to paragraph III admits the deposit of a U. S. Treasury Bond in the amount of \$1,000.00 with the Immigration & Naturalization Service in a matter involving one Eng Kam, but denies each and every other allegation therein contained;

As to paragraph V denies each and every allegation therein contained;

As to paragraph VI admits that plaintiff's bond was declared breached by the District Director, Immigration & Naturalization Service, at San Francisco, on March 20, 1952, and also admits that defendant refuses to return said bond or the cash equivalent, denying, however, each and every other allegation therein contained.

Second Defense

Plaintiff fails to state a claim against defendant upon which relief can be granted, inasmuch as plaintiff has not pleaded all the pertinent provisions of the instant contractual agreement nor pleaded compliance with the conditions of said contract.

Third Defense

Plaintiff has failed to exhaust his administrative remedies provided under Title 8 C.F.R. Sec. 3-1(c).

Wherefore, having fully answered defendant demands that plaintiff's complaint be dismissed with prejudice and with costs.

/s/ CHARLES P. MORIARTY,
United States Attorney;

/s/ F. N. CUSHMAN,
Assistant U. S. Attorney.

Affidavit of Mail attached.

[Endorsed]: Filed June 30, 1955.

[Title of District Court and Cause.]

PRETRIAL ORDER

As a result of a pretrial conference heretofore had on September 29, 1955, in Room 613 of the United States Courthouse, Seattle, Washington, whereat the Honorable William J. Lindberg presided, the plaintiff was represented by Stewart Lombard and M. L. Borawick, and the defendant by Richard F. Broz, Assistant United States Attorney, their attorneys of record, the following issues of fact and law were framed and exhibits identified:

Admitted Facts

The following are the admitted facts herein:

1. That on November 5, 1948, the plaintiff herein executed a bond agreement which, among other things, provided for the posting of a \$1,000 U. S.

Treasury bond bearing serial number 556845E, the purpose of which was to guarantee the delivery of one Eng Kam under certain provisions of said agreement. Both parties agree that said agreement, marked defendant's exhibit No. 1, may be admitted into evidence.

2. That on September 9, 1948, one Eng Kam, a native of China, arrived at San Francisco, California, and applied for admission as a son of a United States citizen under the provisions of Public Law 271, Act of December 28, 1945.

3. That on or about October 26, 1948, a Board of Special Inquiry found that Eng Kam was inadmissible under the provisions of Public Law 271 and ordered Eng Kam excluded and deported.

4. That pending appeal of the order of the Board of Special Inquiry to the Board of Immigration Appeals, Eng Kam was released from custody by the Immigration and Naturalization Service upon the posting of a bond by James P. Sanderson, plaintiff in the present action; that said bonding agreement may be admitted into evidence, and marked defendant's exhibit No. 1.

5. That annexed to said bond and made a part of it was a power of attorney executed by plaintiff herein, wherein he designated the Attorney General and his successors in office as his attorney to sell, collect, assign, and transfer the United States bonds or notes described therein, and recited further that such bonds or notes had been deposited by plaintiff

as security for the faithful performance of any and all of the conditions and stipulations of the bonding agreement, and that upon default of such performance, the Attorney General should have full power to cause the bond to be redeemed. That a photostatic copy of said power of attorney may be admitted into evidence and marked as defendant's exhibit No. 2.

6. That on January 10, 1949, the Commissioner of Immigration and Naturalization affirmed the excluding decision, and appeal was taken to the Board of Immigration Appeals by Eng Kam. On July 1, 1949, the Board of Immigration Appeals affirmed the decision of the Board of Special Inquiry, and dismissed the appeal.

7. That on October 19, 1950, the District Director of Immigration and Naturalization at San Francisco, California, made a demand on the surety to surrender Eng Kam at San Francisco, California, on November 15, 1950, for deportation. Plaintiff did not surrender Eng Kam on that date nor did he surrender him thereafter.

8. On March 5, 1952, Sanderson was notified by registered mail that the conditions of the bond had been violated by his failure to surrender Eng Kam pursuant to the Director's demand of October 19, 1950, and that if he desired he would be granted a period of ten days to submit any representations in writing as to why the bond should not be forfeited.

9. That upon independent investigation by the Immigration authorities, Eng Kam was apprehended by the Immigration Service at Newport, Washington, on March 28, 1952.

10. The District Adjudications Officer of the Immigration and Naturalization Service office at San Francisco ordered that the bond be declared breached as of November 15, 1950, which order was approved by the District Director of Immigration and Naturalization at San Francisco on March 20, 1952, and by the Commissioner of Immigration and Naturalization on May 26, 1952. Eng Kam brought habeas corpus proceedings in this court on March 31, 1952. An order was entered by the Court, after a hearing on June 9, 1952, granting the writ unless a rehearing be had before the Board of Special Inquiry within 30 days. Eng Kam was released on the \$1,000 bond on deposit with the Immigration and Naturalization Service. The Court commented on the application of said order and a copy of the transcript containing the Court's comments may be admitted into evidence as defendant's exhibit No. 3.

11. The Commissioner of Immigration and Naturalization approved the order declaring the bond breached on May 26, 1952. On June 30, 1952, a Board of Special Inquiry was convened in Seattle for the purpose of rehearing in accordance with the Court's order. On July 1, 1952, the Board ordered Kam excluded.

12. On September 24, 1952, the Seattle Branch of the Federal Reserve Bank of San Francisco was

advised by the District Director of Immigration and Naturalization at Seattle that the security bond should be redeemed. On September 25, 1952, the Federal Reserve Bank deposited the amount of collateral to the credit of the United States.

13. Eng Kam in the meantime had appealed from the decision of the Board of Special Inquiry, and on April 21, 1953, the Board of Immigration Appeals reversed the decision of the Board of Special Inquiry, thereby sustaining the appeal of Eng Kam and admitting him to the United States as an alien under the provisions of Public Law 271.

Plaintiff's Contentions

Plaintiff's contentions are as follows:

1. That jurisdiction of this action is conferred upon this Court by 28 U.S.C., Section 1346(a); 28 U.S.C., Section 1402; and 8 U.S.C., Section 1329.

2. That the Commissioner of Immigration and Naturalization did not have authority to forfeit the Treasury bond on deposit to guarantee the physical presence of Eng Kam.

3. That the plaintiff has exhausted his administrative remedies.

4. That defendant, acting by and through its agents, officers and employees, wrongfully and unlawfully failed and refused and still fails and refuses to return said bond with attached coupons or its cash equivalent; that defendant should be ordered by the Court to return Treasury Bond

Serial No. 556845E, face value \$1,000.00, with all coupons attached to date of judgment, less four coupons already paid for to plaintiff, or in the alternative that plaintiff have judgment against defendant in the sum of \$1,000.00 with interest at 2½ per cent per annum from June 16, 1948, less the value of the four coupons, together with plaintiff's costs and disbursements herein.

Defendant's Contentions

Defendant's contentions are as follows:

1. That the transfer to the credit of the United States of the United States Treasury Bond containing serial number 556845E was fully authorized by the terms of the bonding agreement executed November 5, 1948, and the power of attorney conferred upon the Attorney General and his successors in office, marked Defendant's Exhibit No. 2.

2. That such transfer and exercise of the aforesaid power of attorney did not constitute a forfeiture.

3. That the present action is without merit, and should be dismissed by the Court with prejudice and with costs.

Issues of Law

The following are the issues of law to be determined by the Court:

1. Whether or not the transfer of United States Treasury Bond containing serial number 556845E to the credit of the United States, and the refusal

of defendant to deliver the same to the plaintiff, is authorized by the facts in this case, the bond agreement of November 5, 1948, and the power of attorney executed pursuant thereto.

Exhibits

The following exhibits were discussed and may be received in evidence if otherwise admissible without further authentication, it being admitted that each is what it purports to be:

Defendant's Exhibits

1. Duplicate copy of bonding agreement executed by plaintiff and defendant, dated November 5, 1948, and designated "Bond Conditioned for the Delivery of an Alien."

2. Photostatic copy of Power of Attorney executed by plaintiff in favor of the Attorney General or his successors in office, dated November 5, 1948.

3. Certified transcript of extract of proceedings from In the Matter of the Petition of Eng Kam, for Writ of Habeas Corpus, No. 3045, referred to in Admitted Fact No. 10 of the Pretrial Order.

The foregoing pretrial order has been approved by the parties hereto; as evidenced by the signatures of their counsel hereon, and upon the filing hereof the pleadings pass out of the case and are superseded by this order, which shall not be amended except by agreement of the parties and the approval of the Court.

Dated at Seattle, Washington, this 6th day of October, 1955.

/s/ WILLIAM J. LINDBERG,
United States District Judge.

Approved:

/s/ R. F. BROZ for
M. L. BORAWICK,
Attorney for Plaintiff.

/s/ CHARLES P. MORIARTY,
United States Attorney;

/s/ RICHARD F. BROZ,
Asst. United States Attorney.

[Endorsed]: Filed October 6, 1955.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

This Cause coming on for trial on the 6th day of October, 1955, plaintiff being present and represented by one of his attorneys, Myron L. Borawick, Esq., defendant being represented by Richard F. Broz, Assistant United States Attorney; the Court having heard the evidence, considered the exhibits on file, having heard argument of counsel, and being fully advised in the premises; the Court now makes and enters the following

Findings of Fact

I.

That service of the Complaint in this matter was properly made upon the defendant United States of America on the 26th day of April, 1955.

II.

That on or about the 5th day of November, 1948, and at all times since, plaintiff was and now is a resident of the City of Seattle, State of Washington, within the jurisdiction of the United States District Court for the Western District of Washington, Northern Division.

III.

That on or about the 5th day of November, 1948, plaintiff deposited with the Seattle District Director of Immigration and Naturalization, one of defendant officers, agents and employees, one United States Treasury bond, Serial Number 556845E, having a face value of One Thousand Dollars and having 49 coupons attached.

IV.

That at the time plaintiff deposited the foregoing bond, plaintiff entered into a bond agreement, the purpose of which was to guarantee the delivery of one Eng Kam to an officer or officers of defendant upon demand made according to the terms of said agreement; that said agreement is in evidence and marked "Defendant's Exhibit No. 1"; that attached to said bond agreement was a power of attorney executed by plaintiff; that a photostatic copy of

said document is in evidence and marked "Defendant's Exhibit No. 2."

V.

That on or about October 26, 1948, at a hearing before a Board of Special Inquiry, Eng Kam was found inadmissible as a son of a United States citizen and veteran under the provisions of Public Law 271, Act of December 28, 1945; that on January 10, 1949, the Commissioner of Immigration and Naturalization affirmed the excluding decision and an appeal was taken to the Board of Immigration Appeals by Eng Kam; that the decision of the Board of Special Inquiry was affirmed and the appeal dismissed on July 1, 1949, by the Board of Immigration Appeals.

VI.

That on October 19, 1950, the District Director of Immigration and Naturalization at San Francisco, California, made a demand upon plaintiff to surrender Eng Kam at San Francisco on November 15, 1950, for deportation; that Eng Kam was not surrendered on that date or thereafter; that there is no evidence that plaintiff knew where Eng Kam was on that date or thereafter until Eng Kam was apprehended by defendant's agents on March 28, 1952; that by a letter dated March 5, 1952, plaintiff was notified by registered mail that conditions of the bond had been violated by his failure to surrender Eng Kam pursuant to the Director's demand of October 19, 1950, and that if plaintiff desired, he would be granted a 10-day period to submit

representations in writing as to why the bond should not be forfeited.

VII.

That on March 31, 1952, Eng Kam brought habeas corpus proceedings in this Court; that at a hearing held before this Court on June 9, 1952, on Eng Kam's petition, it was determined that Eng Kam had not received a fair hearing before the Board of Special Inquiry hearing on October 26, 1948; that this Court ordered the Writ of Habeas Corpus granted unless a fair rehearing was given Eng Kam within 30 days of the date of hearing on the Habeas Corpus proceedings.

VIII.

That in accordance with this Court's order, a Board of Special Inquiry convened in Seattle on the 30th day of June, 1952, and, on July 1, 1952, ordered Eng Kam excluded; that Eng Kam appealed this decision and, on April 21, 1953, the Board of Immigration Appeals reversed the decision of the Board of Special Inquiry, sustained the appeal of Eng Kam, and admitted Eng Kam to the United States of America under the provisions of Public Law 271.

IX.

That by a letter dated March 25, 1952, plaintiff was advised by the District Director at San Francisco that said District Director had ordered the bond breached as of November 15, 1950, subject to the right of appeal within 10 days; that plaintiff

did appeal; that on May 26, 1952, the Commissioner of Immigration and Naturalization at Washington, D. C., affirmed the Order declaring the bond breached; that by letter dated April 12, 1952, the plaintiff advised the said Commissioner that Eng Kam was then held at the Immigration Station at Seattle, Washington pending habeas corpus proceedings on his right to remain in the United States; that a copy of said letter is in evidence and marked "Plaintiff's Exhibit No. 2"; that receipt of said letter was acknowledged by the Office of the Commissioner of Immigration and Naturalization.

X.

That on September 24, 1952, the Seattle Branch of the Federal Reserve Bank of San Francisco was advised by the District Director of Immigration and Naturalization at Seattle that the security bond posted by plaintiff on November 5, 1948, should be redeemed; that on September 25, 1952, the Seattle Branch of the Federal Reserve Bank of San Francisco deposited the amount of the bond deposited by plaintiff, less the value of 4 coupons which had been returned to the plaintiff, to the credit of the United States of America; that the value of said 4 coupons was Fifty Dollars.

XI.

That at no time has defendant returned to plaintiff the United States Treasury Bond, Serial Number 556845E, or its monetary equivalent; that the defendant did, in fact, forfeit said bond.

From the foregoing Findings of Fact, the Court makes and enters the following

Conclusions of Law

I.

That this Court has jurisdiction over the parties to this action, and over the subject matter of this action.

II.

That under the conditions of the bond agreement plaintiff entered into with defendant, Eng Kam was to be delivered to an immigration officer of defendant when it was finally and legally determined that he be deported.

III.

That the hearing before the Board of Special Inquiry on October 26, 1948, which found Eng Kam inadmissible to the United States under the provisions of Public Law 271 was unfair and improper, and the order of said Board excluding and deporting Eng Kam was invalid.

IV.

That the Order of the District Director of Immigration and Naturalization of October 19, 1950, demanding plaintiff to surrender Eng Kam at San Francisco, California, on November 15, 1950, for deportation was unlawful; that there was no lawful requirement or obligation on plaintiff to surrender Eng Kam for deportation on November 15, 1950, or at any date.

V.

That agents and officers of defendant forfeited the Treasury Bond, Serial Number 556845E which plaintiff posted at the time he entered into the bonding agreement with defendant.

VI.

That the conditions of the bond agreement which plaintiff executed on the 5th day of November, 1948, are to be strictly construed; that said agreement obligated plaintiff to deliver Eng Kam to officers and agents of defendant when it was finally and legally determined that Eng Kam was to be deported.

VII.

That the Order of the District Director of Immigration and Naturalization of October 19, 1950, demanding Eng Kam's surrender was unlawful and invalid, and the failure of plaintiff to do what was not lawfully required of him to do does not constitute a breach of his agreement of November 5, 1948, with defendant.

VIII.

That there has been no breach of the bonding agreement plaintiff executed on November 5, 1948, which would entitle defendant to forfeit the United States Treasury Bond posted by plaintiff with defendant.

IX.

That Eng Kam having been found to be admissible under the provisions of Public Law 271,

plaintiff is entitled to be exonerated as surety on the bond agreement he entered into on November 5, 1948.

X.

That defendant having wrongfully and without authority ordered plaintiff's bond breached, and having wrongfully and without authority forfeited the United States Treasury Bond, Serial Number 556845E, plaintiff is entitled to judgment against defendant United States of America in the sum of One Thousand Dollars (\$1,000.00), with interest thereon at the rate of 4% per annum from the date of this Judgment to the date of the approval of any appropriations act providing for the payment of this Judgment, and for plaintiff's costs to which he is entitled by statute.

Done in Open Court this 19th day of October, 1955.

/s/ WILLIAM J. LINDBERG,
United States District Judge.

Presented by:

/s/ M. L. BORAWICK,
One of Plaintiff's Attorneys.

Approved as to form and Notice of Presentation waived:

/s/ RICHARD F. BROZ,
Assistant U. S. Attorney.

[Endorsed]: Filed October 19, 1955.

United States District Court, Western District of
Washington, Northern Division

No. 3930

JAMES P. SANDERSON,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT

This Court having heretofore made and entered its Findings of Fact and Conclusions of Law in this matter, Now, Therefore, and in accordance therewith:

It Is Hereby Ordered, Adjudged and Decreed that plaintiff James P. Sanderson be, and he is hereby exonerated as surety on the bond agreement entered into by and between plaintiff and defendant on November 5, 1948; and that plaintiff James P. Sanderson have Judgment against defendant United States of America in the sum of One Thousand Dollars (\$1,000.00) with interest thereon at the rate of 4 per cent per annum from the date of this Judgment to the date of approval of any appropriations act providing for the payment of this Judgment, and for plaintiff's costs to which he is entitled by statute.

Done in Open Court this 19th day of October, 1955.

/s/ WILLIAM J. LINDBERG,

United States District Judge.

Presented by:

/s/ M. L. BORAWICK,
Attorney for Plaintiff.

Approved as to form and Notice of Presentation
waived:

/s/ RICHARD F. BROZ,
Asst. United States Attorney.

[Endorsed]: Filed October 19, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: James P. Sanderson, plaintiff; and to M. L. Borawick, attorney for plaintiff; and to Millard Thomas, Clerk of the U. S. District Court for the Western District of Washington:

Notice Is Hereby Given that the United States of America, defendant in the above-entitled action, does hereby give notice of appeal from the final judgment entered in Cause No. 3930 on the 19th day of October, 1955, by the Honorable William J. Lindberg, United States District Judge,

Said appeal being taken to the United States Court of Appeals for the 9th Circuit.

Dated this 16th of December, 1955.

/s/ CHARLES P. MORIARTY,
United States Attorney;

/s/ RICHARD F. BROZ,
Assistant United States Attorney, Attorneys for
Defendant.

[Endorsed]: Filed December 16, 1955.

In the District Court of the United States for the
Western District of Washington, Northern
Division

Number 3930

JAMES P. SANDERSON,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

Transcript of Testimony of James P. Sanderson,
Plaintiff in the above-entitled and numbered cause,
and Decision of the Honorable William J. Lindberg,
a United States District Judge, given on the 6th
day of October, 1955, commencing at 10:00 o'clock
a.m., at Seattle, Washington.

Appearances:

MYRON L. BORAWICK,

Appeared for and on Behalf of the Plain-
tiff; and

RICHARD F. BROZ,

Assistant United States Attorney, Western
District of Washington, Appeared for
and on Behalf of Defendant.

PROCEEDINGS

The Clerk: James P. Sanderson, Plaintiff, vs.
United States of America, Defendant, Cause Num-
ber 3930; Myron L. Borawick appearing for the

Plaintiff; Richard F. Broz, Assistant United States Attorney, appearing for the Defendant.

The Court: Is the Plaintiff ready?

Mr. Borawick: The Plaintiff is ready.

Mr. Broz: The Defendant is ready.

(Opening statement made for and on behalf of the Plaintiff by Mr. Borawick; opening statement waived for and on behalf of the Defendant by Mr. Broz; and the following proceedings were then had, to wit:)

The Court: You desire to present testimony?

Mr. Borawick: Yes, your Honor, I would like to call Mr. Sanderson as a witness. [2*]

JAMES P. SANDERSON

upon being called as a witness for and on behalf of the Plaintiff, and upon being first duly sworn, testified as follows:

Direct Examination

By Mr. Borawick:

Q. Would you please state your name and address, sir?

A. James P. Sanderson. I live at 6045 Seward Park Avenue, Seattle.

Q. And what is your occupation, Mr. Sanderson?

A. I am at the present time an attorney.

Q. You are the Plaintiff in this matter?

A. Yes.

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of James P. Sanderson.)

Q. Mr. Sanderson, did you have occasion on the fifth of November, 1948, to deposit a certain United States Treasury Bond of the value of one thousand dollars (\$1,000.00), with the Seattle District Director of Immigration and Naturalization?

A. Yes.

Q. This was Treasury Bond 196772; is that correct? A. Yes.

Q. Now, calling your attention to March of [3] 1952, did you receive any notice regarding a breach of the bond?

A. I did, from the Office at San Francisco.

Mr. Borawick: Will you mark this?

The Clerk: Plaintiff's Exhibit Number 1 marked for identification.

(Plaintiff's Exhibit 1 marked.)

Q. (By Mr. Borawick): I show you Plaintiff's Exhibit 1 for identification and ask you if you recognize it? A. I do.

Q. What is it, Mr. Sanderson?

A. It is a notification that this bond, filed in this case, was ordered breached.

Q. And that is a copy of the notice you received, is that correct? A. Yes.

Mr. Borawick: I offer this as Plaintiff's Exhibit 1.

(Whereupon, proposed exhibit was handed to Counsel for Defendant.)

Mr. Broz: No objection.

(Testimony of James P. Sanderson.)

The Court: Exhibit Number 1 may be admitted. [4]

(Plaintiff's Exhibit 1 admitted.)

PLAINTIFF'S EXHIBIT No. 1

Registered Mail. Return Receipt Requested.

United States Department of Justice, Immigration
and Naturalization Service, San Francisco,
California

File No. A7054617

Date: March 25, 1952.

J. P. Sanderson, Attorney at Law,
Second Avenue and Cherry Building,
Seattle, Washington.

Dear Sir:

On March 5, 1952, you were notified that the condition of the bond on which you are an obligor with respect to the alien Eng Kam appear to have been violated. It has been concluded that the bond executed by you has been breached for the reason stated in the attached copy of the order declaring the bond breached.

You are advised that you have the right to appeal within ten days after the receipt of this decision to the Commissioner of Immigration and Naturalization Service, Washington, D. C. Please return the attached copy of this letter, appropriately marked

(Testimony of James P. Sanderson.)

to indicate your desire as to appeal. If you desire to submit a brief in connection with your appeal, it should be forwarded to this office in order that it may be sent forward with the other papers in your case.

Very truly yours,

BRUCE G. BARBER,
District Director,
San Francisco District.

By /s/ CHAS. H. KINGSBURY,
District Adjudications Officer.

- I do desire to appeal from the above decision.
 I am attaching brief for the consideration of the Commissioner.

/s/ J. P. SANDERSON,
Signature of Bondsman.

Admitted in evidence October 6, 1955.

The Court: May I see it?

(Whereupon, exhibit was handed to the Court.)

The Court: You may proceed, Mr. Borawick.

Mr. Borawick: Thank you, your Honor.

Q. (By Mr. Borawick): Now, following the apprehension of Eng Kam in March, 1952, did you bring a habeas corpus action in his behalf?

A. I did.

Q. Do you recall, Mr. Sanderson, when that action was brought?

(Testimony of James P. Sanderson.)

A. It was filed on March 31, 1952, to the best of my knowledge and belief.

Q. And that was before this Court, is that right?

A. Yes.

Q. Did you notify the Commissioner of Immigration and Naturalization in Washington of the fact that this action had been filed——

A. (Interposing): I did.

Q. ——on behalf of Eng Kam? [5]

A. I did.

Mr. Borawick: Will you mark this, please?

The Clerk: Plaintiff's Exhibit Number 2 marked for identification.

(Plaintiff's Exhibit 2 marked.)

Q. (By Mr. Borawick): I show you what has been marked for identification as Plaintiff's Exhibit 2. Do you recognize that, sir? A. Yes.

Q. What is it?

A. I advised the Commissioner at Washington that Eng Kam had been made the subject of habeas corpus proceedings at Seattle and it was intended to advise the Commissioner that further action should be stayed pending the final decision of this Court.

Q. And this is a copy of that letter, is that correct? A. Yes.

Mr. Borawick: I offer this as Plaintiff's Exhibit 2.

Mr. Broz: No objection.

The Court: Exhibit 2 may be admitted. [6]

(Testimony of James P. Sanderson.)

(Plaintiff's Exhibit 2 admitted.)

PLAINTIFF'S EXHIBIT No. 2

April 12, 1952.

Commissioner,
Immigration & Naturalization Service,
Washington, D. C.

Dear Sir:

In re: Eng Kam, A-7054617 WU, January
15, 1951.

Forfeiture of bond filed in this case is now up
for consideration.

The subject was recently apprehended and is now
in the custody of the District Director at Seattle,
pending the outcome of habeas corpus proceedings
scheduled for trial in the district court on May 5,
1952. It is alleged that the hearing before the Serv-
ice was unfair and if the court so holds it would
seem that the bond should not be forfeited.

Yours truly,

/s/ J. P. SANDERSON.

Admitted in evidence October 6, 1955.

Mr. Borawick: Will you mark this, please?

Q. (By Mr. Borawick): Did the Commissioner
of Immigration and Naturalization acknowledge
receipt of that particular letter, Mr. Sanderson?

(Testimony of James P. Sanderson.)

A. Yes.

The Clerk: Plaintiff's Exhibit Number 3 marked for identification.

(Plaintiff's Exhibit 3 marked.)

Q. ((By Mr. Borawick): I show you Plaintiff's Exhibit 3 for identification. Do you recognize that document? A. I do.

Q. What is it, Mr. Sanderson?

A. It is an acknowledgment of the letter that I wrote to him on April 12, 1952, just discussed.

Mr. Borawick: I offer this as Plaintiff's Exhibit 3.

Mr. Broz: No objection, your Honor.

The Court: Exhibit Number 3 may be admitted. [7]

(Plaintiff's Exhibit 3 admitted.)

PLAINTIFF'S EXHIBIT No. 3

United States Department of Justice
Immigration and Naturalization Service
Washington 25, D. C.

Please Address Reply to

And Refer to This File No.: A-7054617-T.

May 6, 1952.

J. P. Sanderson, Esquire,
Second Avenue and Cherry Building,
Seattle 4, Washington.

(Testimony of James P. Sanderson.)

Dear Mr. Sanderson:

Reference is made to your letter of April 12, 1952, concerning the bond in the case of Eng Kam.

Your communication is being forwarded to the District Director of this Service at Seattle, Washington. That official will advise you further in the matter.

Sincerely yours,

/s/ W. F. KELLY,
Assistant Commissioner,
Enforcement Division.

Admitted in evidence October 6, 1955.

Q. (By Mr. Borawick): Now, calling your attention again to the notification of the breach of the bond which you received in March, 1952; did you file an appeal brief in accordance with that letter?

A. I filed an appeal in accordance with the regulations existing at that time.

Q. Did you ever receive acknowledgement from the Seattle Office of the Immigration and Naturalization Service of this appeal brief having been filed?

A. Had not been filed?

Q. Had been filed? A. Yes.

Mr. Borawick: Would you mark that, please?

(Testimony of James P. Sanderson.)

The Clerk: Plaintiff's Exhibit Number 4 marked for identification.

(Plaintiff's Exhibit 4 marked.)

Q. (By Mr. Borawick): I show you what has been marked for [8] identification as Plaintiff's Exhibit 4. Do you recognize that, sir?

A. I do.

Q. What is it?

A. It is merely an answer to my letter inquiring about breaching and forfeiting the bond, and they advised that the case had been appealed to the Commissioner-Assistant Commissioner of the Adjudications Division of the Immigration Service at Washington, D. C., and that the appeal was dismissed and the collateral forfeited.

Q. And that is from what office of the Immigration Service?

A. That is from the Seattle Immigration Office, August 5, 1952.

Mr. Borawick: I offer this as Plaintiff's Exhibit 4, your Honor.

Mr. Broz: No objection, your Honor.

The Court: Exhibit 4 may be admitted.

(Plaintiff's Exhibit 4 admitted.)

(Testimony of James P. Sanderson.)

PLAINTIFF'S EXHIBIT No. 4

United States Department of Justice
Immigration and Naturalization Service
815 Airport Way
Seattle 4, Washington

Please Refer to This File Number: A-7054617.

August 5, 1953.

James P. Sanderson, Esquire,
Attorney at Law,
Second Avenue and Cherry Building,
Seattle 4, Washington.

Dear Sir:

Reference is made to your letter of July 27, 1953, concerning this bond deposited in behalf of Eng Kam in 1948.

As you know, an order was entered by the District Director, San Francisco, California, in 1952 declaring the bond breached and the collateral forfeited. This matter was appealed to the Assistant Commissioner, Adjudication Division, Immigration and Naturalization, Washington, D. C. The appeal was dismissed, and since that time the collateral has been forfeited.

Respectfully,

/s/ JOHN P. BOYD,
District Director.

Admitted in evidence October 6, 1955.

(Testimony of James P. Sanderson.)

Q. (By Mr. Borawick): Now, Mr. Sanderson, did you follow the administrative procedure outlined in that letter notifying you of the breach of that bond back in [9] March, 1952?

A. I appealed the case in the regular way.

Q. Was Eng Kam finally admitted to the United States? A. He was.

Q. When was that, Mr. Sanderson?

A. That was sometime in 1953.

Q. Have you ever received back the one thousand dollar bond which was deposited November 5, 1948. A. No.

Q. Have you ever received the cash equivalent of this bond from the United States or any of its agents? A. No.

Q. Have you received any of the coupons back which were attached to the bond?

A. I received four, the value of four, coupons: twelve-fifty (\$12.50) each or a total of fifty dollars (\$50.00).

Mr. Borawick: Would you mark this, please?

The Clerk: Plaintiff's Exhibit Number 5 marked for identification.

(Plaintiff's Exhibit 5 [10] marked.)

Q. (By Mr. Borawick): When did you receive the final decision on the breach and forfeiture of the bond, if you did?

A. I wrote to the various offices of the Immigration Service several times requesting information on that point but I never did receive a copy of the

(Testimony of James P. Sanderson.)

final order forfeiting or breaching the bond until some time this year, or about three years after it was declared forfeited.

Q. I show you what has been marked for identification as Plaintiff's Exhibit 5. Do you recognize that document of two (2) pages?

A. There are two documents here. One is from the Immigration Office at San Francisco, May 16th, advising that the bond had been breached and contains a copy of the final order breaching the bond, or affirming the order forfeiting the bond, of 1952. This is by the Assistant Commissioner of the Adjudications Division at Washington, D. C. In other words, it is the final order.

Q. And that was in May of what year, Mr. Sanderson?

A. It is dated May 26, 1952, but I didn't receive it until 1955. [11]

Mr. Borawiek: I offer this as Plaintiff's Exhibit 5.

Mr. Broz: No objection, your Honor.

The Court: Exhibit 5 may be admitted.

(Plaintiff's Exhibit 5 admitted.)

(Testimony of James P. Sanderson.)

PLAINTIFF'S EXHIBIT No. 5

United States Department of Justice
Immigration and Naturalization Service
San Francisco, California

In Replying Please Refer to This File Number: A-
7054617.

May 16, 1955.

Mr. J. P. Sanderson,
Attorney at Law,
Second Ave. & Cherry Building,
Seattle 4, Washington.

Dear Sir:

Reference is had to your letter of May 5, 1955, addressed to the Commissioner of Immigration and Naturalization, Washington, D. C., in which you question whether your appeal on the order of the District Director, San Francisco, breaching the bond in the case of Eng Kam, was ruled on by the Commissioner.

As the original decision is contained in the San Francisco file, we are enclosing herewith a copy.

Very truly yours,

BRUCE G. BARBER,
District Director;

By /s/ ARTHUR J. KAHL,
Chief, Examinations Branch.

Encl.

(Testimony of James P. Sanderson.)

Form G-346

(10-30-51)

U. S. Department of Justice
Immigration and Naturalization Service

APPEAL FROM DISTRICT DIRECTOR'S
DECISION

File No.: A-7054617 Adj.

Date: April 14, 1952.

To: Commissioner.

From: District Director, San Francisco District.

By: Chas. H. Kingsbury, District Adjudications Of-
ficer.

Subject: Eng Kam.

Section: 8 CFR 169.3.

Note: This alien has been apprehended in the
Spokane District and the file has been
forwarded to that office for use in
habeas corpus proceedings.

Pursuant to above-cited regulation, entire file re-
lating to the subject, including timely appeal, is
transmitted for decision.

(Testimony of James P. Sanderson.)

A-7054617 AAS.

Date: May 26, 1952.

To: District Director, San Francisco, California.

From: Commissioner.

By: Assistant Commissioner Adjudications Division, Central Office.

The decision and order of the District Director in the above-cited case is affirmed. Temporary file A-7054617 is forwarded herewith.

/s/ ELEANOR ENRIGHT,
Assistant Commissioner,
Adjudications Division.

Enclosure Registered:

(Copy)

Admitted in evidence October 6, 1955.

Q. (By Mr. Borawick): Do you recall the rate of interest which that one thousand dollar bond bore, Mr. Sanderson?

A. Two and one-half per cent (2½%).

Mr. Borawick: Your witness.

(Testimony of James P. Sanderson.)

Cross-Examination

By Mr. Broz:

Q. Mr. Sanderson, did you receive a letter of demand dated October 19, 1950, that the plaintiff, for which you were obligator on the bond, produce Eng Kam in San Francisco?

A. I did receive such a notification.

Q. You received such a notification?

A. Yes.

Q. Did you offer to surrender Eng Kam after receiving that demand?

A. No; for the reason that I instituted the correspondence to begin with and asked the Immigration Service to proceed with the case so that the [12] Government would be the plaintiff and at the prospect of trial I expected to show that the boy was entitled to be admitted to the United States and also that the Government had no authority to breach the bond administratively.

Q. You were relying then on your writ of habeas corpus, your petition for writ of habeas corpus, to forestall any action that the immigration Service might take on your bond? A. Finally, yes.

Q. However, you did receive the notice and you were aware that the bond provided that upon demand of the Immigration Service you were to surrender Eng Kam?

A. Yes, but I didn't recognize that the Government had any authority to make such a demand.

(Testimony of James P. Sanderson.)

Q. You executed the bond agreement on November 15, 1948? A. Yes.

Q. That was November 5, 1948?

A. Whatever date it was. I concede that.

Q. And you were aware of the provisions that were on the bond? A. Yes.

Q. Were you aware that there was a [13] provision on the bond relating to the amount of collateral being a provision for liquidated damages rather than a penalty?

A. Yes. I didn't—while I didn't pay much attention to it, whatever I signed is correct.

Q. At the time when the Immigration and Naturalization Service demanded that you produce Eng Kam in San Francisco on November 15, 1950, did you know where Eng Kam was?

A. No. No, I don't think so.

Q. Is your answer that you don't recall or that you did not know where he was?

A. Well, off hand, to the best of my memory, I would say that I did not know where he was. I am satisfied I did not know where he was at the time he was apprehended.

Q. You don't recall whether or not you knew where he was at the time you received the letter of demand?

A. I would say that I did not, no.

Mr. Broz: Will you mark this for identification, please?

The Clerk: Defendant's Exhibit Number 1 marked for identification.

(Testimony of James P. Sanderson.)

The Court: Is that A-1? [14]

The Clerk: A-1.

(Defendant's Exhibit A-1 marked.)

Q. (By Mr. Broz): Mr. Sanderson, I hand you what purports to be a letter. Do you recognize it, sir? A. Yes.

Q. What is it?

A. Well, it is just to acknowledge receipt of notice about the presenting of Eng Kam for deportation.

Q. You did receive this? A. Yes.

Mr. Broz: I will offer this exhibit in evidence.

Mr. Borawick: No objection.

The Court: Exhibit A-1 may be admitted.

(Defendant's Exhibit A-1 admitted.)

DEFENDANT'S EXHIBIT A-1

Form I-322

(10/5/51)

Registered Mail—Return Receipt Requested.

A7054617 Adj.

United States Department of Justice Immigration
and Naturalization Service, San Francisco,
California, March 5, 1952

Jas. P. Sanderson, Attorney at Law,
Second Avenue and Cherry Building,
Seattle, Washington.

Dear Sir:

As an obligor on the bond executed on November 5, 1948, with respect to the alien(s) Eng Kam, you

(Testimony of James P. Sanderson.)

are hereby notified that the condition(s) of that bond appear to have been violated in that he failed to appear as demanded on 11-15-50.

This office proposes to submit a report to the district director for his decision as to any further action to be taken with respect to the bond.

If you desire to do so, you may on or before 10 business days from receipt of this letter submit to this office in writing any representations which you desire to make as to why the condition(s) of the bond should not be declared breached and the amount of the obligation thereunder declared forfeited. Any representations that you make will accompany the report of this office to the district director and will be considered by him. In order that your representations may be properly considered as a part of the case, it is suggested that you submit them to this office and not directly to the district director.

/s/ CHAS. M. KINGSBURY,
Officer in Charge Adjudica-
tions.

PRM:rr

Return Receipt attached.

Admitted in evidence October 6, 1955.

(Testimony of James P. Sanderson.)

Q. (By Mr. Broz): That letter which has just been admitted into evidence stated that you had ten days in which to file written objections to the order of the District Director declaring that the bond be breached? [15] A. Yes.

Q. Did you ever file a written objection to the District Director's order?

A. I did. The previous exhibit proves that point.

Q. In what form was your written objection?

A. It was written on a typewriter of several pages giving the reasons for my objections.

Q. Was that the letter—is that the document you referred to as an appeal? A. Yes.

Q. Where did you file that, sir?

A. I beg pardon?

Q. Where did you file that?

A. I filed that with the Commissioner of Immigration at Washington, D. C.

Q. Do you recall that the letter just admitted into evidence requested you file any objections in writing to the District Director at San Francisco?

A. Well, I undoubtedly did file it at San Francisco; through the San Francisco office to the Office at Washington.

Q. Do you recall ever writing a letter to the office at San Francisco outlining your objections to [16] why—as to why the bond should not be breached?

A. I don't remember that, but I did file the appeal on the objections in accordance with the regulations. The San Francisco Office was aware of

(Testimony of James P. Sanderson.)

it. I think I sent it through the San Francisco Office, but I am not sure. But, that point was satisfied, anyway, when the Assistant Commissioner finally affirmed the order.

Q. When did you first know that the bond had been transferred to the credit of the United States?

A. Would you repeat that, please?

Q. When were you first aware that the bond which you had posted as collateral had been transferred to the credit of the United States?

A. I was advised, I think, in nineteen—well, I didn't so far as I can recall I didn't—receive any satisfactory information until I got notice that the coupon bonds in the amount of fifty dollars (\$50.00) were returned.

Q. And when was that, sir?

A. I think that was in September, 1953.

Q. September, 1953?

A. But I think that I did receive some indication from the Service before, in 1952, that the bond had been breached, but I am not sure. The [17] exhibits will take care of that.

Q. Do you recall the approximate date when you became aware that the bond had been deposited with the Federal Reserve and the amount of the bond credited to the United States?

A. The——

Q. (Interposing): Did you receive any correspondence from the Service in regard to that?

A. No; not until—I don't remember that but there wasn't anything definite at all until I got the

(Testimony of James P. Sanderson.)

copy of the order affirming the breaching of the bond. That was in May, 1955.

Q. Did you ever inquire prior to that time as to what had happened to the bond?

A. I made several inquiries to the Immigration Service in regard to the bond.

Q. By telephone? A. By letter.

Q. Did you receive any response?

A. Yes; I—one of the exhibits that has been presented shows that.

Q. What was the response?

A. The response was that the bond had been ordered breached.

Q. Did you conclude at that time that the [18] bond had been transferred to the United States; that it had been, in effect—

A. (Interposing): Well, I took it for granted that the bond was transferred to the United States when these coupons were returned without any letter of explanation.

Mr. Broz: I have no further questions.

Redirect Examination

Mr. Borawick: Will you mark this, please?

The Clerk: Plaintiff's Exhibit 6 marked for Identification.

(Plaintiff's Exhibit 6 marked.)

Q. (By Mr. Borawick): I show you Plaintiff's Exhibit 6 for identification, Mr. Sanderson. Do you recognize that? A. I do.

(Testimony of James P. Sanderson.)

Q. What is it, sir?

A. Well, it is a letter to the Commissioner of Immigration in Washington, of September 26th, in regard to the intention of forfeiting this one thousand dollar bond.

Mr. Borawick: I offer this as Plaintiff's Exhibit 6, your Honor. [19]

Will you mark this?

The Clerk: Plaintiff's Exhibit Number 7 marked for identification.

(Plaintiff's Exhibit 7 marked.)

Mr. Broz: I will object to the document unless Counsel lays a proper foundation for its admission.

Mr. Borawick: Well, if the Court please, questions have been asked on cross-examination concerning——

The Court (Interposing): May I see the exhibit?

Mr. Borawick: Yes, sir.

(Whereupon, proposed exhibit was handed to the Court.)

(Whereupon, there was a brief pause.)

The Court: All right, Mr. Borawick.

Mr. Borawick: Your Honor, questions have been asked the Plaintiff on cross-examination regarding the attempts that he made to discover what had happened to this bond, and this is one of the letters sent to the Immigration and Naturalization people regarding it following the notification of the breach.

(Testimony of James P. Sanderson.)

I believe that is admissible under [20] those circumstances. The Defendant brought it up.

The Court: What is the foundation desired—as to the original?

Mr. Broz: No, your Honor, I was requesting a foundation as to the relevancy of the letter. It may be that Counsel's position is well taken. If I may examine it again, the Government may wish to withdraw its objection.

(Whereupon, proposed exhibit was handed to Counsel for Defendant.)

(Whereupon, there was a brief pause.)

Mr. Broz: The Government will withdraw its objection, your Honor.

The Court: All right. That is Exhibit Number 6, is it?

Mr. Borawick: Yes, your Honor.

The Court: Plaintiff's Exhibit Number 6 may be admitted.

(Plaintiff's Exhibit 6 admitted.)

PLAINTIFF'S EXHIBIT No. 6

September 26, 1952.

Commissioner of Immigration & Naturalization,
Washington, D. C.

Dear Sir:

Re: Eng Kam, A-7054617-T, May 6, 1952.

During the first few months of this year there was correspondence between the District Director at San Francisco and the Central Office concerning the

(Testimony of James P. Sanderson.)

intention to forfeit the \$1000 bond deposited with the District Director at Seattle. My brief in opposition is dated April 2, 1952.

Subsequently to the above Eng Kam was apprehended in Eastern Washington with instructions that he be taken to San Francisco for deportation, the port of arrival. Upon arrival at Seattle en route to San Francisco a writ of habeas corpus was issued by the United States District Court. At the trial the Service was represented by John Keane, an attorney in the employ of the Immigration Service.

On June 9, 1952, the Court held that the hearing accorded Eng Kam at San Francisco was unfair, granted the petition, and directed that the Immigration Service conduct a fair hearing at Seattle, and further:

“Ordered, Adjudged and Decreed that petitioner shall be released immediately upon the One Thousand Dollar (\$1,000.00) bond now on deposit.”

Pursuant to the Service instructions it is presumed that the local Immigration Office promptly advised the Central Office and forwarded copy of the Order.

A Board of Special Inquiry heard the case in July and directed exclusion. Appeal dated July 21, 1952, accompanied the record to Washington where it is now pending before the Board of Immigration Appeals.

Since the movement had been set last spring to forfeit the bond, the matter took a new status—a

(Testimony of James P. Sanderson.)

Court litigation—which the Central Office is by law obliged to notice and respect.

It is significant that the Court held that the Immigration officers at San Francisco as well as the Board of Immigration Appeals had acted unfairly, violated the law and regulations and Court decisions in excluding the petitioner; directed that a new hearing be given by the Immigration officers, and that the \$1000 bond was then good and ordered that the petitioner be released under the same pending the final determination of the Court action; that the petitioner is now legally at large under said bond.

It is believed that the forfeiture of the bond at this stage is premature and wrong and that such course should not have been taken until the petitioner's remedies are exhausted. It is therefore requested that the bond be reinstated.

Under date of April 12, 1952, you were advised that Eng Kam was apprehended and was in the custody of the District Director at Seattle pending the outcome of habeas corpus proceedings with the information that the bond should not be forfeited provided the Court holds that the hearing at San Francisco is unfair.

Yours truly,

/s/ J. P. SANDERSON.

Admitted in evidence October 6, 1955.

(Testimony of James P. Sanderson.)

Q. (By Mr. Borawick): I show you what has been marked for identification as Plaintiff's Exhibit Number 7, Mr. Sanderson. Do you recognize that? A. I do. [21]

Q. What is it, sir?

A. It is a copy of a letter addressed to the Commissioner of Immigration of June 9, 1953, advising that Eng Kam had been found admissible to the United States by the Board of Immigration Appeals, and requests an answer.

Mr. Borawick: I offer this as Plaintiff's Exhibit 7. I think the foundation is laid for the same reason.

Mr. Broz: No objection.

The Court: Exhibit 7 may be admitted.

(Plaintiff's Exhibit 7 admitted.)

PLAINTIFF'S EXHIBIT No. 7

June 9, 1953.

Commissioner of Immigration and Naturalization,
Washington, D. C.

Dear Sir:

Re: Eng Kam, A-7054617, Nov. 18, 1952.

Your letter states that the Board of Immigration Appeals is being requested to forward the subject's file to your office after action has been completed,

(Testimony of James P. Sanderson.)

and upon receipt I will be advised concerning the bond matter.

Please refer to my letter of April 29, 1953, advising that the BIA had on April 21, 1953, that the subject was found admissible under the Act of December 28, 1945, as amended, and requested that the bond be returned.

No communication has been received from the Central Office in regard to this matter since receiving the letter of November 18, 1952.

At present I am at a loss to know whether this matter has been overlooked or whether it is to be ignored.

From an equitable point of view it is only reasonable that my request be answered.

Yours truly,

/s/ J. P. SANDERSON.

Admitted in evidence October 6, 1955.

Mr. Borawick: I have no further questions, your Honor.

Mr. Broz: No further questions, your Honor.

The Court: That is all, Mr. Sanderson.

(Witness excused.)

Mr. Borawick: The Plaintiff rests, may it please the Court.

Mr. Broz: The Government rests, your Honor.

The Court: All right, you may proceed with argument. I take it that the Government's [22] position is that the Plaintiff has not made a case, is that correct?

Mr. Broz: Yes, your Honor.

The Court: All right.

Mr. Borawick: May it please the Court?

The Court: I am just going to finish reading this, Mr. Borawick, and then you may proceed. I have not finished reading this last letter.

Mr. Borawick: I am sorry.

(Whereupon, there was a brief pause.)

The Court: All right, you may proceed.

(Whereupon, closing argument was made for and on behalf of the Plaintiff by Mr. Borawick and closing argument was made for and on behalf of the Defendant by Mr. Broz, and the following proceedings were then had, to wit:)

The Court: Court is now recessed until two o'clock this afternoon.

(Whereupon, at 11:23 o'clock a.m., a recess was had in the within-entitled and numbered cause until 2:00 o'clock p.m., October 6, 1955, at which time, Counsel heretofore noted being present, the following proceedings were had, to wit:)

The Court: In the case on trial in which [23] I indicated I would give a decision after the noon re-

cess, I have reviewed the authorities and evidence again and the matter presents a provoking question, so far as I am concerned at least.

There appears to be no doubt but what there must be applied the rule of strict construction in construing the obligation of the bond here involved.

Condition number (2) of the bond I find to be the applicable provision. It reads as follows:

“(2) If, in case the said alien, upon such hearing or hearings, is found to be unlawfully within the United States and is for any reason released from custody pending issuance of a warrant of deportation or after said warrant has been issued and pending final deportation, the above-bounden obligors, or either of them, shall cause the said alien to be delivered at San Francisco, California, into the actual custody of an officer of the United States Immigration and Naturalization Service, upon and pursuant to the request of said officer or of any other officer of the United States Immigration and Naturalization Service, for deportation under the aforesaid warrant of deportation, and said alien is accepted by such officer, then this obligation * * *” is “void.” [24]

Now, what we have here is a surety bond given to assure the deliverance of this individual Eng Kam for deportation when it has been finally determined that he is to be deported.

If there had been action declaring the bond breached shortly after Eng Kam failed to appear as demanded in November, 1950, and the forfeiture ordered substantially before Eng Kam was appre-

hended, there would be a serious question whether Plaintiff could recover. However, there was no action taken until about the time that he was apprehended and time for appeal had not expired until after apprehension. Then a petition for a writ of habeas corpus was filed, the ultimate result of which was a finding that the hearing and order of deportation thereunder was unlawful. Thereafter, upon further hearing and appeal, the Department itself found that Eng Kam was entitled to stay in this Country. It thus appears that the demand for his appearance for deportation, which was the basis of the declared breach, was unlawful.

It must be held under a rule of strict interpretation therefore that there was no lawful requirement that Eng Kam be presented for deportation. The failure to do that which was ultimately [25] found not required cannot be a ground for concluding that there has been a breach of bond subjecting the obligor, in this case Mr. Sanderson, to a forfeiture of the one thousand dollar (\$1,000.00) Government bond.

I recognize, as I indicated this morning, that for the obligor here, Mr. Sanderson, to fail to produce the principal in this case, Eng Kam, because he thought the hearing was not valid, perhaps would not be a sufficient reason in and of itself to justify his refusing to produce Eng Kam if demanded. I gather from the evidence Mr. Sanderson didn't know where Eng Kam was so that he couldn't have produced him in any event prior to his apprehension

by the immigration authorities. Nevertheless, the purpose of the bond here is to assure the Service that the person being released from custody will be available when and if it should be determined that he is to be deported. That is the underlying purpose of the bond and, with that thought in mind, and bearing in mind the strict construction required, I am of the opinion that there has not been, in view of the circumstances that have developed in this case, a breach that would entitle the Government to retain the bond or proceeds [26] thereof which, in effect, have been forfeited as a result of the Government's action herein.

In other words, I have come to the conclusion, after the noon hour, that recovery should be granted as prayed for.

The original hearings and any orders resulting therefrom were invalid as decided in the habeas corpus proceedings. Consequently, any appearance of Kam for deportation, as demanded by the immigration authorities, could not be construed as a lawful requirement or condition of the contract.

The Court recognizes the administrative difficulties that confront the Immigration and Naturalization Department if one similarly situated should just decide he wasn't going to produce a person because he felt that the hearing was invalid. This, however, does not change the law. So, that is the Court's ruling.

Judgment will be for the Plaintiff.

Does that give you sufficient to make your proposed findings?

Mr. Borawick: I believe so, your Honor.

The Court: Under the case in 33 Federal 2nd, I think the finding might be made the [27] other way. All in all, I believe that the equities of the situation do require the decision that the Court has just announced.

Anything further? How much time do you want to present these findings?

(Whereupon, there was a brief pause.)

The Court: I will give you two weeks; make it the 24th.

(Whereupon, hearing in the within-entitled and numbered cause was concluded.) [28]

Reporter's Certificate

I, Earl V. Halvorson, Official Court Reporter for the United States District Court, Eastern and Western Districts of Washington, do hereby certify that the foregoing is a full, true and correct transcript of proceedings hereinbefore set forth; that any omissions from a complete transcript of proceedings had have been parenthetically noted herein; and I do further certify that the foregoing transcript has been transcribed by me or under my direction.

/s/ EARL V. HALVORSON,

[Endorsed]: Filed January 12th, 1956. [29]

DEFENDANTS EXHIBIT No. 1

Form I-353.

United States Department of Justice
Immigration and Naturalization Service
(Rev. 9-1-47)

Bond Conditioned for the Delivery of an Alien

(Note: Instructions on Form 1-308 Should
Be Strictly followed in Preparing This Bond.)

(Name of alien): Eng Kam.

Seattle, Washington,
November 5, 1948

Examined and Approved as to Legal Form and
Execution and Accepted.

/s/ R. S. GORHAM,
Immigration and Naturalization Officer in Charge.
District Director, Seattle District.

Know All Men by These Presents:

That we, Jas. P. Sanderson, residing at Second
Avenue & Cherry Bldg., Seattle, Washington, are
held and firmly bound unto the United States of
America, in the full and just sum of One Thousand
and no/100 Dollars (\$1,000.00), as liquidated dam-
ages and not as a penalty, to be paid to the United
States, for which payment well and truly to be
made, without relief from valuation or appraise-
ment laws, we, and each of us, do bind ourselves,
our heirs, executors, administrators, successors, and

assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 5th day of November, 1948.

Whereas, Eng Kam, an alien, aged years, a native of China, who arrived at the port of San Francisco, California, per "General Meigs" on the 9th day of September, 1948, has applied for admission to the United States.

And Whereas, the said alien, pending the final disposal of his case, has applied to an immigration and naturalization officer of the United States for his release from custody upon giving a proper bond or undertaking in accordance with Section 20 of the Immigration Act of 1917 (39 Stat. 890), that he will deliver himself at San Francisco, California, into the custody of the same officer or some other officer of the United States Immigration and Naturalization Service for hearing or hearings and/or for deportation in case he is found to be unlawfully within the United States;

Now, Therefore, the conditions of this obligation are such that (1) in case said alien is released from custody, if the above-bounden obligors, or either of them, shall cause the said alien to be delivered over to an officer of the United States Immigration and Naturalization Service, at San Francisco, California upon and pursuant to the request of said officer or of any other officer of the United States Immigration and Naturalization Service for a hearing

or hearings, and further, notwithstanding any delivery of the said alien for hearing or hearings pursuant to the foregoing conditions, (2) if, in case the said alien, upon such hearing or hearings, is found to be unlawfully within the United States and is for any reason released from custody pending issuance of a warrant of deportation or after said warrant has been issued and pending final deportation, the above-bounden obligors, or either of them, shall cause the said alien to be delivered at San Francisco, California, into the actual physical custody of an officer of the United States Immigration and Naturalization Service, upon and pursuant to the request of said officer or of any other officer of the United States Immigration and Naturalization Service, for deportation under the aforesaid warrant of deportation, and said alien is accepted by such officer, then this obligation to be void; otherwise to remain in full force and virtue: Provided, that it is hereby specifically covenanted and agreed by the above-bounden obligors, and each of them, that no order issued by or under the authority of the Attorney General by virtue of which the said alien is or may be granted additional time to appear for hearing or hearings, or by virtue of which issuance or execution of a warrant of deportation is or may be deferred, or by virtue of which the said alien is or may be permitted to depart voluntarily from the United States, shall be in any manner construed to impair or render void this obligation or any part thereof.

Line 14 beginning with "has been" deleted; lines 15, 16 and 17 deleted and in Line 17 "has applied for admission to the United States" inserted; lines 21, 26 and 33 "at San Francisco, California," inserted; line 28 beginning with "in regard" and ending with "custody" deleted; all prior to final execution of this bond.

[Seal] /s/ JAS. P. SANDERSON.

Signed and sealed in the presence of—

Name: Veryl G. Toms,

Address: 815 Airport Way, Seattle, Wash.

Name: Amy Rice,

Address: 815 Airport Way, Seattle, Wash.

For Use When United States Bonds or Notes
Are Deposited as Security

The United States bonds/notes described in the annexed schedule are hereby pledged as security for the performance and fulfillment of the foregoing undertaking in accordance with Section 1126 of the Revenue Act of 1926, approved February 26, 1926, as amended (6 U.S.C. 15), and Treasury Department Circular 154 (revised), dated February 6, 1935, (31 CFR Part 225).

/s/ JAS. P. SANDERSON.

Title of bonds/notes: United States Treasury Bond
of 1967-72.

Coupons attached: 49 coupons (numbered 6 to 54,
inclusive).

Face value: \$1,000.

Interest rate: 2½%.

Serial No.: 556845E.

Interest dates: Dec. 15, 1948, to Dec. 15, 1972.

DEFENDANT'S EXHIBIT No. 2

Form I-302

U. S. Department of Justice

Immigration and Naturalization Service

(Rev. 5-1-44)

POWER OF ATTORNEY

(For individual. To be securely attached to original
bond)

Know All Men by These Presents, that I, the undersigned, of Seattle, Washington, do hereby constitute and appoint the Attorney General, and his successors in office, as my attorney, for me and in my name to collect or to sell, assign, and transfer certain United States bonds or notes, described as follows:

Title of Bonds/Notes: United States Treasury Bond
of 1967-72.

Coupon or Registered: 49 coupons (numbered 6 to 54, inclusive).

Total Face Amount: \$1,000.

Denomination: 2½%.

Serial Number: 556845E.

Interest Dates: Dec. 15, 1948, to Dec. 15, 1972.

Such bonds/notes having been deposited by me as security for the faithful performance of any and all of the conditions or stipulations of a certain bond, entered into by me with the United States, dated November 5, 1948, and made a part hereof, on behalf of Eng Kam. . . . years of age, native of China, and I agree that, in case of any default in the performance of any of the conditions and stipulations of such undertaking, my said attorney shall have full power to collect said bonds/notes or any part thereof, or to sell, assign, and transfer said bonds/notes or any part thereof, without notice, at public or private sale, free from any equity of redemption and without appraisalment or valuation, notice and right to redeem being waived, and to apply the proceeds of such collection, sale assignment, or transfer, in whole or in part to the satisfaction of any damages, demands, or deficiency arising by reason of such default, as my said attorney may deem best.

And I hereby for myself, my heirs, executors, administrators, and assigns, ratify and confirm whatever my said attorney shall do by virtue of these presents.

In Witness Whereof, I have hereunto set my hand and seal this, the 5th day of November, 1948.

[Seal] /s/ JAS. P. SANDERSON.

Before me, the undersigned, a notary, public within and for the county of King, in the State of Washington, (or the District of Columbia), personally appeared the above-named Jas. P. Sanderson and acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this 5th day of November, 1948.

[Seal] CLARE BALL,
Notary Public.

My Commission expires May 5, 1951.

DEFENDANT'S EXHIBIT No. 3

In the District Court of the United States for the Western District of Washington, Northern Division

Number 3045

In the Matter of

The Petition of ENG KAM, for Writ of Habeas Corpus.

Transcript of portion of proceedings relating to bond in the above-entitled and numbered cause, had on the 9th day of June, 1952, at Seattle, Wash-

ington, before the Hon. William J. Lindberg, a United States District Judge.

Appearances:

EDWARDS E. MERGES,

Appeared for and on Behalf of the Petitioner; and

JOHN W. KEANE,

Immigration and Naturalization Service,

Appeared for and on Behalf of the Respondent.

Whereupon, the following proceedings were had, to wit:

PROCEEDINGS

(Whereupon, the Court having given his oral decision, and argument having been had on the subject of Petitioner's bond, the following proceedings were had, to wit:)

The Court: Well, it seems to me they have one thousand dollars of this boy's money and if it belongs to the Government they will get it and have it. In the meantime I think it is sufficient to guarantee his appearance.

Mr. Keane: Do I understand that the Court's order runs to—in other words, the collateral now on deposit in the Federal Reserve Bank cannot be touched by the Attorney General as liquidated damages?

The Court: This doesn't release it. It says, "Petitioner shall be released immediately upon the one thousand dollars now on deposit."

Mr. Keane: It makes no disposition of the bond?

The Court: No. I don't want to disturb any rights the Government may have or the Petitioner may have.

Mr. Merges: That doesn't disturb any right.

The Court: Do you understand that?

Mr. Keane: That is the only question.

The Court: You have seen the order?

Mr. Keane: Yes, your Honor.

(Whereupon, hearing was concluded.) [2*]

Reporter's Certificate

I, Earl V. Halvorson, official court reporter for the within-entitled court, hereby certify that the foregoing is a true and correct extract of proceedings in the within-entitled and numbered cause as set forth and that the same has been transcribed by me or under my direction.

/s/ EARL V. HALVORSON.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Wash-

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

ington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 10 of the United States Court of Appeals for the Ninth Circuit and Rule 75(1) of the Federal Rules of Civil Procedure, and designation of counsel, I am transmitting herewith the following original documents in the file dealing with the action, including exhibits, as the record on appeal herein to the United States Court of Appeals for the Ninth Circuit at San Francisco, said papers and documents being identified as follows:

1. Complaint, filed Apr. 25, 1955.
 2. Summons with Marshal's return thereon, filed 4/28/55.
 3. Answer, filed June 30, 1955.
 4. Plaintiff's Trial Memoranda, filed 9/29/55.
 5. Defendant's Trial Brief, filed Oct. 4, 1955.
 6. Pretrial Order, filed Oct. 6, 1955.
- Proposed Findings of Fact and Conclusions of Law by Plaintiff, lodged Oct. 17, 1955.
- Judgment, lodged by Plaintiff Oct. 17, 1955, as proposed.
7. Notice of Presentation of proposed Findings and Judgment, filed Oct. 17, 1955.
 8. Findings of Fact and Conclusions of Law, as signed and filed Oct. 19, 1955.
 9. Judgment, as signed and filed Oct. 19, 1955.
 10. Cost Bill, filed Oct. 19, 1955.
 11. Notice of Appeal, filed Dec. 16, 1955.
 12. Motion to Extend Time for Filing Record on Appeal, and Docketing, filed Jan. 3, 1956.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO SUPPLEMENTAL RECORD
ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of the order of court directing transmission of original exhibits I am transmitting herewith as part of the record on appeal in this cause, and supplemental to the record as sent up, the following additional exhibits as referred to in the pretrial order in said cause, to wit:

Defendant's Exhibit No. 1, Bond for Delivery of Alien.

Defendant's Exhibit No. 2, Power of Attorney, Sanderson to Attorney General.

Defendant's Exhibit No. 3, Court Reporter's Transcript of portion of proceedings relating to bond, after Court's oral decision, in Cause No. 3045, in re Eng Kam, on June 9, 1952.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said Court at Seattle this 28th day of February, 1956.

[Seal]

MILLARD P. THOMAS,
Clerk;

By /s/ TRUMAN EGGER,
Chief Deputy.

[Endorsed]: No. 15050. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. James P. Sanderson, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed February 29, 1956.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15050

UNITED STATES OF AMERICA,

Appellant,

vs.

JAMES P. SANDERSON,

Appellee.

STATEMENT OF POINTS ON WHICH
APPELLANT INTENDS TO RELY

Appellant intends to rely upon the following points on the appeal of the above-captioned case to the Court of Appeals for the Ninth Circuit:

1. The District Court erred in ruling that the conditions of the Immigration bond were not breached when plaintiff failed to produce the alien for deportation upon due notice and demand by Immigration and Naturalization Service officials.

2. The District Court erred in ruling that a habeas corpus order excused retroactively the breach of the bond for failure to produce the alien on due demand and notice where the order was issued subsequent to the failure to appear on the ground that the hearing which led to the deportation order was procedurally improper.

3. The District Court erred in ruling that a second administrative determination, under which the

original final administrative determination was reversed and the alien was found to be admissible, retroactively obviated the necessity for the alien's appearance on the original order and excused the breach of the bond for failure to produce the alien on due demand and notice.

4. The District Court erred in granting judgment to plaintiff.

/s/ RICHARD F. BROZ,

Assistant United States Attorney, Attorney for Defendant (Appellant herein).

I hereby certify that I have personally mailed to M. L. Borawick, Box 867, Midway, Washington, Counsel for Appellee in this cause, a copy of this Statement of Points on Which Appellant Intends to Rely this 16th day of March, 1956.

[Seal] /s/ RICHARD F. BROZ.

Subscribed and sworn to before me this 16th day of March, 1956.

[Seal] /s/ LOIS M. STOLSEN,
Deputy Clerk, United States District Court, Western District of Washington, Northern Division.

[Endorsed]: Filed March 19, 1956.

